

Special Session

Agenda Item #	2
Meeting Date	October 15, 2007
Prepared By	Barbara B. Matthews City Manager
Approved By	

Discussion Item	Amending the City Code to Require the Payment of a Living Wage by City Contractors
Background	<p>On July 9, 2007, the Council held a worksession to discuss the City's enactment of a Living Wage Law. At the conclusion of the worksession, there was a consensus on the part of the Council to move forward with the adoption of a Living Wage Law.</p> <p>Staff subsequently prepared a draft ordinance, which was discussed by the Council on October 1, 2007. As initially proposed, the Living Wage Law would be applicable to for-profit contractors with ten or more employees and whose service contract with the City has a value of \$50,000 or more. Exempt contracts would include the following: those procured through an emergency procurement, sole source procurement, or cooperative purchase procurement; contracts for utility services provided by a regulated public utility; contracts with public entities or non-profit agencies; and employers who are expressly precluded by federal or state law from complying.</p> <p>During the October 1, 2007 worksession, staff noted that the Council may wish to consider decreasing the contract value as set forth in the initial draft so that the legislation would have a more meaningful impact. The Council asked the City Manager to compile a list of recent service contracts that met the criteria of the proposed Living Wage Law, excluding the contract value threshold, so that the Council could evaluate this issue.</p> <p>As requested by the Council, a summary of recent service contracts is attached. Based on this information, staff has revised the proposed Living Wage Law to reflect a lower contract value amount.</p> <p>Key provisions of the revised legislation are as follows:</p> <ul style="list-style-type: none"> • The City's living wage rate would be equal to Montgomery County's hourly rate, which is currently \$11.95. It is adjusted annually to reflect increases in the Consumer Price Index for the Washington-Baltimore metropolitan area. • Contractors who offer health insurance would receive a credit against the living wage rate. For example, a contractor pays \$2,080 per year for health insurance coverage, which is the equivalent of \$1 per hour annualized. The contractor could credit that amount against the annualized wage of \$11.95 per hour and pay its employee \$10.95 per hour. • The proposed Living Wage Law would be applicable to for-profit contractors with ten or more employees and whose service contract with the City has a value of \$20,000 or more. Exempt contracts would include the following: those procured through an emergency procurement, sole source procurement, or cooperative purchase procurement; contracts for utility services provided

	<p>by a regulated public utility; contracts with public entities or non-profit agencies; and employers who are expressly precluded by federal or state law from complying.</p> <ul style="list-style-type: none"> • The living wage rate would not be applicable to any employee who is covered by a collective bargaining agreement, participates in a government-operated or government-sponsored program that restricts earnings or wages to a level below the mandated wage level, or who is in a summer youth employment program..
Policy	The Council establishes procurement policies for the City of Takoma Park.
Fiscal Impact	The Montgomery County Procurement Office has indicated that enactment of a Living Wage Law does result in higher costs. The financial impact will vary depending on the services utilized by the City in the future and the contract value of those service agreements.
Attachments	Draft Ordinance requiring payment of a living wage by City contractors
Recommendation	Staff recommends that the Council approve first reading of the draft ordinance.
Special Consideration	

Introduced by:

First Reading:
Second Reading:
Effective Date:

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NO. 2007-

**An Ordinance Amending Chapter 7.08
of the *Takoma Park Code*
to Require the Payment of a
Living Wage by City Contractors**

WHEREAS, the wages of many workers nationwide and in the Washington, D.C. metropolitan area have not kept pace with the cost of providing for themselves and their families; and,

WHEREAS, the City of Takoma Park supports the payment of a wage level that enables workers to support themselves and their families, often referred to as a living wage; and,

WHEREAS, the City Council wishes to ensure that entities that receive substantial compensation by reason of a contract with the City of Takoma Park pay their employees a living wage; and,

WHEREAS, the City Council wishes to amend the City's purchasing and procurement law to require the payment of a living wage by certain contractors.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THAT:

SECTION 1. Title 7, Purchasing and Taxation, Chapter 7.08, Source Selection and Contract Formation, of the *Takoma Park Code* is amended to add a new Article 5, Living Wage Requirement, as follows:

Article 5. Living Wage Requirement

7.08.180. Scope

Every City contract for the provision of services, awarded after a competitive bid or proposal process, shall require the contractor and any subcontractor to pay each employee assigned to perform services under the City contract a living wage. As used in this Article, "covered employer" refers to any contractor or subcontractor who is subject to the City's living wage requirement.

7.08.190 Exemptions

The provisions of this Article do not apply to the following:

- A. A contractor or subcontractor who employs fewer than ten (10) employees.
- B. A contract for services valued at less than \$20,000.00.

C. A contract:

1. With a public entity.
2. With a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c) (3) of the Internal Revenue Code.
3. Procured through an emergency procurement, sole source procurement, or cooperative purchase procurement.
4. For electricity, telephone, cable television, water, sewer, or similar service delivered by a regulated public utility.
5. For the purchase or lease of goods, equipment or vehicles.

D. If the City Manager makes a written determination that application of this Article would conflict with an applicable federal or state program, contract, or grant requirement, then the living wage requirements of this Article shall not apply to the contract or program.

7.08.200 Solicitation Requirements

A. The City's living wage requirement shall be identified and set forth in all non-exempt procurement solicitations for the contract.

B. Each response to a bid or proposal to provide services to the City and each City contract for services must include a certification that the contractor and each subcontractor shall comply with the City's living wage requirements or a certification by the contractor or subcontractor setting forth the applicable exemption from the living wage requirement, along with supporting documentation for the exemption. Any contractor or subcontractor who knowingly makes a false statement in such certification, or who fails to comply with the living wage requirement during performance of a City contract for services, shall be subject to loss of the contract and disqualification from future City contracts.

C. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement under this Article.

D. If a contractor or subcontractor commits in its bid or proposal to provide health insurance to any employee who provides services to the City under a City contract, the contractor or subcontractor may:

1. Certify in its bid or proposal the per-employee hourly cost of the employer's share of the premium for that insurance; and
2. Reduce the wage paid under Section 7.08.210 to any employee covered by the health insurance by all or part of the per-employee hourly cost of the employer's share of the health insurance premium.

7.08.210 Living Wage Requirement

A. Except as permitted under Section 7.08.200.D, each covered employer must pay each employee who is not exempt under subsection F of this section no less than the City's Living Wage Rate.

B. The City's living wage rate shall be equal to the Montgomery County living wage rate established and published by Montgomery County pursuant to Section 11B-33A of the *Montgomery County Code* and any applicable regulations, as amended and in effect from time-to-time.

C. The City's living wage rate shall be adjusted as of July 1 of each year to reflect the most current Montgomery County living wage rate and shall be applicable to any contract awarded thereafter until the date of the next adjustment; provided, however, that the wage rates in effect at the time a contract is awarded to a covered employer by the City shall remain in effect under such contract during its original term. At the time of the exercise of any renewal option under a City contract with a covered employer, the required wage rate shall be adjusted as provided above, and as adjusted, shall remain in effect during the renewal term.

D. The City Manager shall establish the applicable living wage rate by April 1 of each year and cause such rate to be published in English and Spanish on the City's web site. Notice of the required living wage rate also shall be stated in procurement solicitations, as required by Section 7.08.200.A.

E. Each covered employer must include the living wage requirements of this Article in every subcontract so that the provisions of this Article will be binding upon each subcontractor.

F. The living wage requirements of this Section do not apply to any employee:

1. Who performs no measurable work related to any contract with the City;
2. Who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this section;
3. Who participates for no longer than 120 days in any calendar year in a government operated or government-sponsored summer youth employment program; or
4. For whom a lower wage rate is expressly set in a bona fide collective bargaining agreement.

G. If any federal, state, or City law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.

7.08.220 Notices

A. Each covered employer shall conspicuously post notice of the required City living wage rate, in English and Spanish, on such form as shall be provided by the City.

B. Within three (3) days of an employee's request, a covered employer shall provide to such employee a written statement in English and Spanish, on such form as shall be provided by the City, of the then required living wage rate.

7.08.220 Enforcement

A. During the term of the City contract and for a period of three (3) years after the expiration or earlier termination of the City contract, each contractor and subcontractor subject to the provisions of this Article, shall keep and preserve records which show the wages provided by such contractor and its subcontractors to each employee who provided services under the City

contract. The City Manager, or designee, shall have the power to examine such records at reasonable times during normal business hours for the purpose of administering and enforcing the provisions of this Article, and to make copies of all or any parts thereof.

B. As an additional term of the City contract, no covered employer shall discharge, reduce the compensation of, or otherwise retaliate against an employee for asserting any right under this Article, filing a complaint of violation, or taking any other action to enforce the requirements of this Article. Any retaliation is subject to all sanctions for noncompliance with this Article.

C. City contracts may specify that liquidated damages for any noncompliance with this Article include the amount of any unpaid wages, with interest at the judgment rate from the date originally due and less any deductions required or permitted by law, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor.

D. Any contractor or subcontractor which fails to pay an employee the living wage required by this Article shall be liable to the employee in the amount of the unpaid wages, plus interest at the judgment rate from the date originally due and less any deductions required or permitted by law, reasonable attorney's fees, and damages for any retaliation for asserting any right under this Article. Any aggrieved employee of a covered employer under a City contract shall be deemed a third-party beneficiary of the City contract and of the provisions mandated by this Article in the City contract

SECTION 2. This Ordinance shall be effective on January 1, 2008.

Adopted by the Council of the City of Takoma Park, Maryland, this _____ day of _____, 2007 by roll-call vote as follows:

AYE:

NAY:

ABSTAIN:

ABSENT:

**Summary of Recent City Contracts
Possibly Meeting Proposed Living Wage Law Criteria
July 1, 2006 - Present**

<u>Project Description</u>	<u>Contract Value at Time of Award</u>
Newsletter Printing Services	11,550
COLTA Construction Management	13,900
Preparation of City's Comprehensive Annual Financial Report	14,000
COLTA Rents Analyst	17,000
Jackson Boyd Park Playground Design	18,250
Wage Survey and Compensation Study	18,257
Executive Search Firm Services	19,500
Inspector/Construction Monitoring Services	20,000
Crossroads Youth Center Clinical Social Worker	21,000
Maple Ave Pedestrian Bridge Repair	24,500
Neighborhood Traffic Calming Study	25,000
Council Chambers/Auditorium Renovation Study	28,130
TV Inspection and Cleaning of Stormwater System	29,691
Tenant Capacity Building	30,000
Annual Financial Audit	30,450
Cleveland Avenue Rain Garden	30,707
Gym Feasibility Study	36,345
Survey of City Residents	37,000
GIS Stormwater Database	38,110
Old Carroll Stormline Repair	38,700
Athletic Field Maintenance	39,577
Mississippi Ave/Comstock Branch Streambank Repair	43,362
Community Center Signage	48,000
Gateway and Identification Signage	57,684
Ethan Allen Gateway Design Charrette	89,900
Street Construction FY08	188,854
Street Construction FY07	715,341

Note: The above listing only reflects those contracts believed to meet the criteria set forth in the proposed living wage law. Some may fall within one of the exemption parameters, such as having fewer than ten employees.